IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2290 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATUBHAI NAGINDAS MODI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE, AGP for Respondent No. 1 to 3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/04/2000

ORAL JUDGEMENT

#. The petitioner - Natubhai Nagindas Modi came to be detained under the provisions of Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM Act" for short), by virtue of

the order passed by the District Magistrate, Bharuch dated 17/19.2.2000 in exercise of powers of section 3 of the PBM Act. The order was passed with a view to prevent the petitioner/detenue from acting in a manner prejudicial to maintenance of supplies of commodities namely wheat, rice, sugar and kerosene essential to the community.

#. Many contentions are raised by the petitioner in the petition. However, the petition deserves to be allowed on a single ground namely, consideration of representation by the detaining authority after the approval of the detention order by the State Government. Ms. Subhadra Patel, learned counsel appearing for the petitioner has produced before this Court, zerox copy of representation made on behalf of the detenue on March 9, 2000 along with postal acknowledgment slip. She has also produced a communication received from the District Magistrate, dated April 10, 2000 wherein, after considering the merits of the representation, it has been stated that the representation cannot be accepted. The impugned order was passed on 17th/19th February, 2000 by the District Magistrate. The said order was approved by the Government on 1st March, 2000 as required under the provisions of the PBM Act. After the approval, the detaining authority became functus officio and could not have considered the representation. Instead, the detaining authority has considered and rejected the representation. It also transpires that the representation is not even forwarded to the government and therefore, the right of the detenue of making an effective representation is infringed in violation of Article 22(5) of the Constitution of India. The continued detention of the detenue, therefore, is rendered bad in law and the petition therefore, deserves to be allowed.

#. Mr. K.T. Dave, learned AGP places on record affidavit on behalf of the detaining authority and Ms. P.J. Dawavala, learned Standing Counsel appearing for respondent no.4 also places on record affidavit made on behalf of respondent no.1.

#. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 17/19.2.2000 is hereby quashed and set aside. The detenue - Natubhai Naginbhai Modi is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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